

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Comments on Joint Board Second	)	DA 98-2410
Recommended Decision	)	

**COMMENTS OF U S WEST COMMUNICATIONS, INC.  
TO JOINT BOARD'S SECOND RECOMMENDED DECISION**

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## SUMMARY

U S WEST Communications, Inc. ("U S WEST") agrees with the Joint Board that sufficient federal support should be directed to non-rural carriers to offset high intrastate costs in states with insufficient internal resources to ensure affordable rates for local service. Although U S WEST agrees with the Joint Board's recommendation to use a cost benchmark, rather than a revenue benchmark, U S WEST does not agree with the Joint Board's proposed distribution methodology to use averaged costs at a study-area or state-wide level, or a range of averaged benchmark costs between 115% and 150% to determine how federal high cost support should be distributed. These proposals by the Joint Board are in direct conflict with the Commission's and many parties' goal to target federal support. U S WEST also disagrees with the Joint Board's refusal to address the legislative requirement that implicit subsidies be replaced by explicit support for universal service -- a recommendation which is in direct conflict with the mandate of Congress.

U S WEST does not agree with the Joint Board's recommendations about imposing billing-content requirements and prohibitions on some carriers who attempt to recover their universal service contributions from consumers. The Joint Board's recommendations address only part of the contribution recovery and billing problem. The Joint Board's end-user billing concerns can readily be addressed and the Commission can ensure competitive neutrality among all contributors if the Commission requires all contributors to recover their contributions through a

uniform mandatory retail end-user surcharge. U S WEST urges the Commission to re-examine the merits of an end-user surcharge. The Joint Board's suggestions that the Commission should dictate to carriers the content of their written and oral speech to consumers about universal service contributions raises serious First Amendment concerns about government regulation of commercial speech and will not withstand judicial scrutiny.

While U S WEST agrees with the Joint Board's conceptual approach that federal support should flow from the urban, high-density populations and states to the rural, low-density, and high-cost populations and states, and while U S WEST agrees that a cost benchmark, rather than a revenue benchmark, should be utilized, U S WEST disagrees with much of what the Joint Board recommends, including: the Joint Board's averaged cost methodology to distribute federal support, the Joint Board's refusal to make any recommendations about replacing implicit subsidies with explicit support, and the Joint Board's Constitutionally-defective recommendations about regulating carriers' commercial speech.

More than two years ago, the Commission said that a proceeding should be initiated to gather facts that federal high cost funds can be made available to partially offset line extension or construction charges associated with establishing service to low income consumers. U S WEST agrees with the Joint Board that the Commission should follow through with that promise to consumers.

The Commission made the commitment to Congress and to the non-rural LECS that it would have the federal high cost support mechanism in place by July 1, 1999. The Joint Board's recommendations raise many issues. However, the

Joint Board's recommendations, if adopted, would reverse the course and the goals which the Commission has diligently pursued in this docket. In the short time remaining, U S WEST urges the Commission to re-focus its efforts in this docket on completing the work to be done and the remaining issues to be decided so that the new federal high cost support mechanism for non-rural LECs can be in place and operational by July 1, 1999.

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**COMMENTS OF U S WEST COMMUNICATIONS, INC.  
TO JOINT BOARD'S SECOND RECOMMENDED DECISION**

U S WEST Communications, Inc. ("U S WEST") hereby submits comments to the Federal-State Joint Board's Second Recommended Decision released November 25, 1998<sup>1</sup> pursuant to the Public Notice.<sup>2</sup>

I. INTRODUCTION

U S WEST agrees with the Joint Board's conceptual approach that federal support should flow from the urban, high-density populations and states to the rural, low-density, and high-cost populations and states. However, the Joint Board's recommended methodology to distribute support for high cost areas is at odds with Congressional intent and with the extensive factual record in this docket.

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<sup>1</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Second Recommended Decision, FCC 98J-7, rel. Nov. 25, 1998 ("Second Recommended Decision").

<sup>2</sup> Public Notice, DA 98-2410 rel. Nov. 25, 1998 ("Notice").

II. U S WEST AGREES WITH THE JOINT BOARD'S RECOMMENDATION TO DIRECT SUFFICIENT FEDERAL SUPPORT TO NON-RURAL CARRIERS TO OFFSET COSTS IN STATES WITH INSUFFICIENT RESOURCES TO ENSURE AFFORDABLE AND REASONABLY COMPARABLE RATES

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The purpose of the federal high cost fund envisioned by Section 254 of the Telecommunications Act of 1996 ("1996 Act") is to ensure that rates to consumers for universal service in rural, insular, and high cost areas remain affordable and reasonably comparable.

The Joint Board recommends an approach "for directing sufficient federal support to non-rural carriers to offset high intrastate costs in states with insufficient internal resources to ensure affordable and reasonably comparable rates."<sup>3</sup> Although U S WEST disagrees with the methodology proposed by the Joint Board to distribute federal support funds to achieve this goal, U S WEST agrees with the Joint Board's recognition that some states have insufficient resources and require assistance from the federal funding mechanism to ensure the continued availability and affordability of universal service to consumers within their borders.

III. THE JOINT BOARD'S RECOMMENDATIONS ARE BASED UPON USING AVERAGED COSTS AND THE RECOMMENDATIONS ARE LEGALLY INDEFENSIBLE, BECAUSE IMPLICIT SUBSIDIES CANNOT THEN BE REMOVED AND REPLACED WITH EXPLICIT SUPPORT AS REQUIRED BY CONGRESS

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A. The Joint Board's Recommended Decision Imposes A New Competition Requirement For High Cost Support Not Based Upon The 1996 Act

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Universal service has historically been supported by a complex regime of implicit subsidies. Implicit subsidies upon which universal service relied in the

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<sup>3</sup> Second Recommended Decision ¶¶ 3-4.



past were sustainable only because exclusive local franchises prevented would-be competitors from entering the market and undercutting the inflated, above-cost rates that make subsidization possible.<sup>4</sup>

In a competitive market, however, the system cannot survive, because new entrants will target incumbent local exchange carriers' ("LEC") most profitable customers and services where the services are priced well above cost. These actions by new entrants deprive the incumbents of the revenue sources needed to support below-cost rates for the other customers -- whom the new competitors have no interest in serving. The Federal Communications Commission ("Commission") has recognized the problem:

[The] incentive to entry by competitors in the lowest-cost, highest profit market segments means that today's pillars of implicit subsidies -- high access charges, high prices for business services, and the averaging of rates over broad geographic areas -- will be under attack. New competitors can target service to more profitable customers without having to build into their rates the types of cross-subsidies that have been required of existing carriers who serve all customers.<sup>5</sup>

When Congress chose to promulgate mechanisms in the 1996 Act to open the local market to competition, Congress exposed the maze of implicit subsidies to assault in the face of competition. Congress was required to develop an alternative to maintain universal service in a competitive telecommunications market.

Congress instructed the Commission to abolish the old system of implicit

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<sup>4</sup> In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 8786-87 ¶ 17 (1997) ("Universal Service Order"); appeal pending sub nom. Texas Office of Public Utility Counsel v. FCC, No. 97-60421 (5th Cir. 1997).

<sup>5</sup> Id.

support and replace it with explicit and sufficient new funding mechanisms to support universal service. Congress directed the Commission to complete its proceeding to implement the new, explicit funding system before implicit subsidy mechanisms were eroded.<sup>6</sup>

To carry out its statutory responsibilities, the Commission has conducted three principal rulemaking proceedings, described as the “competition trilogy,” which produced the Local Competition Order,<sup>7</sup> the Access Charge Reform Order,<sup>8</sup> and the Universal Service Order. In late 1996, the Chairman affirmed the Commission’s commitment to this trilogy:

The universal service proceeding addresses the flip side of the golden coin of competition. How do we fund universal service when the law prohibits implicit subsidies and the evolving competitive marketplace undermines those implicit subsidies anyway? We must create an economically sustainable universal service system that explicitly compensates universal service providers for the true costs of providing universal service. We must create a universal service system that allows existing universal service providers -- for now, primarily incumbent LECs -- the capability to respond to competitors by reducing prices to high volume customers (the cream in the cream-skimming strategy of most new entrants), without requiring massive rate increases to other customers in order to pay for the total network. We must create a universal service system that allows companies to compete to provide universal service, so that universal service is provided with the highest quality and the lowest price possible. All this has been endorsed by unanimous vote of the Universal Service

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<sup>6</sup> 47 U.S.C. § 254(a)(2): “The Commission shall complete such proceeding [to implement the recommendations from the Joint Board] within 15 months after the date of enactment of the Telecommunications Act of 1996.”

<sup>7</sup> See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499 (1996).

<sup>8</sup> See In the Matter of Access Charge Reform, First Report and Order, 12 FCC Rcd. 15982 (1997).

Joint Board. Now we have to write the rules that put these principles in operation.

We will address both sides of this competition coin -- access reform and universal service -- by April of 1997.<sup>9</sup>

However, even as the Commission adopted rules in the Local Competition and Access Reform dockets to erode the incumbents' implicit subsidies which had been available to support universal service, the Commission brushed aside criticisms, promising to address incumbents' concerns about the sufficiency of support to preserve and advance universal service in the universal service docket or in another proceeding.

The Joint Board's Second Recommended Decision does little to address the gaps which the Commission's patchwork of Orders has created in the competition trilogy or to provide recommendations for universal service support funding which will be "sufficient" and "explicit" as required by Congress who said: "Any such support [for universal service] should be explicit and sufficient to achieve the purposes of this section."<sup>10</sup> While the Joint Board concedes that the issue of implicit support for universal service is "intertwined" with the Commission's ongoing Access Reform docket,<sup>11</sup> the Joint Board is unwilling to address head on the existence of implicit subsidies and their replacement with explicit support mechanisms. The

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<sup>9</sup> Reed E. Hundt, "The Hard Road Ahead -- An Agenda for the FCC in 1997" at 5 (Dec. 26, 1996) (emphasis added).

<sup>10</sup> 47 U.S.C. § 254(e).

<sup>11</sup> Second Recommended Decision ¶ 22.

Joint Board only recommends that the Commission continue to “synchronize” these proceedings.<sup>12</sup>

The Joint Board says that it does not believe “that current circumstances warrant a high cost support mechanism that results in a significantly larger federal support amount than exists today”<sup>13</sup> because “[i]ncumbent LECs to date have not demonstrated that implicit support has eroded as a result of competition.”<sup>14</sup> The Joint Board misses the point and ignores Congressional intent. There is no prerequisite in Section 254 of the 1996 Act to demonstrate, after the fact, that implicit support which non-rural LECs have historically received has eroded before a sufficient and explicit federal support mechanism is put in place. That is not a requirement of the 1996 Act and it clearly was not the intent of Congress. Rather, Congress directed the Commission to implement the new, explicit universal service funding system before implicit subsidy mechanisms were eroded.<sup>15</sup> The Joint Board’s conclusion that incumbent LECs must demonstrate that competition has eroded implicit subsidies before incumbent LECs will be eligible for high cost support is backwards.

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<sup>12</sup> Id.

<sup>13</sup> Id. ¶ 49.

<sup>14</sup> Id. ¶ 50.

<sup>15</sup> 47 U.S.C. § 254(a)(2): “The Commission shall complete such proceeding [to implement the recommendations from the Joint Board] within 15 months after the date of enactment of the Telecommunications Act of 1996.”

B. The Joint Board's Proposed Distribution Methodology Inexplicably Reverses The Course Which The Commission Has Charted Over At Least The Last Three Years

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While the Joint Board originally recommended that costs be determined at the wire center level or below to minimize the opportunity to perpetuate implicit subsidies,<sup>16</sup> the Joint Board now recommends that federal support for universal service be determined “by measuring costs at the study area scale, a scale considerably larger than the wire center.”<sup>17</sup>

U S WEST supports the Joint Board's recommendation to use “a single national cost benchmark”<sup>18</sup> rather than a revenue benchmark. However, the record in this docket does not support the use of averaged costs at a study-area or state-wide level, as recommended by the Joint Board. Moreover, the record does not support the Joint Board's recommendation that federal high cost support should only be available if the averaged costs exceed a national average cost benchmark by at least 115% and perhaps by as much as 150%.

The record is replete with evidence that support must be targeted to high cost consumers, regardless of where they reside or whether they are served by a rural or a non-rural company. Using averaged costs at a study-area or a state-wide level totally disregards the substantial evidence which parties as well as state commissions have presented in this proceeding. In the Universal Service Order, the

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<sup>16</sup> In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd. 87, 232-33 ¶ 277 (1996).

<sup>17</sup> Second Recommended Decision ¶ 32.

<sup>18</sup> Id. ¶ 43.

Commission concluded that a forward-looking economic cost methodology could be designed to target support more accurately by calculating costs over a smaller geographical area than the cost accounting systems that the incumbent LECs currently use.<sup>19</sup> The Commission incorporated this conclusion as a mandatory requirement in the Commission's cost model selection criteria:

The cost study or model must deaverage support calculations to the wire center serving area level at least and, if feasible, to even smaller areas such as a Census Block Group, Census Block, or grid cell.<sup>20</sup>

Accordingly, in view of the record, the Joint Board's recommendation to use averaged costs cannot be sustained.

The recommendation to use averaged costs flies in the face of over three years of effort by the Commission and by interested parties in this docket to fashion a reasonable federal support mechanism, consistent with Congressional intent, which will target subscribers in those states who need help. In one stroke, the Joint Board sweeps away the Commission's efforts to develop a forward-looking cost model and a rational support mechanism which can be used to target federal high cost support.

In addition to reversing the Commission's course, the Joint Board's recommendation to use averaged costs will perpetuate existing implicit subsidies within a study area or state in violation of Section 254 of the 1996 Act. This methodology involves averaging costs at a study-area or state-wide level for serving both high-density (i.e., urban) and low-density (i.e., rural) subscribers. It ignores the interrelationship which Congress saw between the entry of competition in the

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<sup>19</sup> Universal Service Order, 12 FCC Rcd. at 8899-900 ¶¶ 225-26.

local market and the corresponding need to remove implicit subsidies and replace them with explicit funding for universal service. Study-area or state-wide averaging perpetuates the implicit subsidies which now reside in the rates paid by urban business subscribers and which flow to support services for rural subscribers in a state. Moreover, because urban business subscribers are the most vulnerable to competition, Congress recognized that they could no longer be expected to subsidize rural subscribers who are not vulnerable to competition. Such a support mechanism was rejected by Congress when it directed that implicit subsidies should be removed and replaced with explicit support.<sup>21</sup>

U S WEST strongly opposes the Joint Board's recommendation "to measure costs at the study area level at this time."<sup>22</sup> This approach is at odds with the Joint Board's primary recommendation that high cost support should be targeted to consumers living in the highest cost areas.<sup>23</sup> If averaged costs are used, targeting discrete consumers who required assistance is impossible.

The Joint Board suggests that only averaged costs which exceed the national weighted average cost-per-line by at least 115% and perhaps by as much as 150% should be eligible for federal support.<sup>24</sup> There is no evidence in the record to support this range if averaged costs are used to distribute support. However, if costs are not

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<sup>20</sup> Id. at 8912-16 ¶ 250.

<sup>21</sup> 47 U.S.C. § 254(e).

<sup>22</sup> Second Recommended Decision ¶ 33.

<sup>23</sup> Id. ¶ 58.

<sup>24</sup> Id. ¶ 43.

averaged at a study-area or state-wide level and if support is targeted, this suggested range may be reasonable.

C. A System Which Maintains Implicit Subsidies Violates Section 254(e)

(1) Implicit Subsidies In Interstate Access Rates

Interstate access charges have historically provided an implicit source of funding for universal service. The Joint Board side steps the issue and says: “[W]e make no recommendation regarding whether the Commission should eliminate implicit support from interstate access rates.”<sup>25</sup> The Joint Board fails to recommend, as it must, that the implicit subsidies provided by interstate access charges be replaced by explicit funding mechanisms. The Joint Board says only that the Commission should “seek to ensure that any reductions in interstate access rates inure to the benefit of consumers.”<sup>26</sup>

(2) Implicit Subsidies In Intrastate Rates

In the Universal Service Order, the Commission envisioned a shared responsibility with the states to preserve and advance universal service. In the Second Recommended Decision, the Joint Board again recommends that the Commission and the states share responsibility for universal service.<sup>27</sup> And while the Joint Board concedes that the language in the 1996 Act “may militate for making intrastate universal service support explicit,” the Joint Board concludes

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<sup>25</sup> Id. ¶ 23.

<sup>26</sup> Id.

<sup>27</sup> Id. ¶ 24.



that states may maintain the existing implicit subsidies in their rates to support universal service.<sup>28</sup>

This construction is neither supported by the explicit language used by Congress nor by the interrelationships which the Commission and some states have recognized between the erosion of implicit subsidies and replacement with explicit funding.

(3) The Joint Board's Failure To Recommend A System Which Replaces Implicit Subsidies With Explicit Support Is Arbitrary And Legally Indefensible

The Joint Board disregards the competition trilogy and the profound impact which the Access Reform Order and the Local Interconnection Order have had on eroding the implicit subsidies previously available to incumbent LECs to support universal service. Congress directed the Commission to complete its proceeding to implement the new, explicit funding system for universal service before implicit subsidy mechanisms were eroded.<sup>29</sup> The Joint Board turns Congressional intent on its head and declares that non-rural carriers must demonstrate that implicit subsidies have been eroded as a consequence of competition.

Before legal error is compounded regarding the design of the high cost support mechanism, it is critical that the Commission come to closure on how to deal with explicit funding for universal service and the erosion of some implicit subsidies which have already been put in motion by the Commission. It has been held that "restructur[ing] the entire industry on a piecemeal basis" can itself be

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<sup>28</sup> Id. ¶ 26.

arbitrary, and that “an agency does not act rationally when it chooses and implements one policy and decides to consider the merits of a potentially inconsistent policy in the very near future.”<sup>30</sup>

The Joint Board’s recommendations for the federal high cost fund are perilously close to arbitrariness. The Commission must address the issues completely. Nothing in the Joint Board’s Second Recommended Decision undertakes a meaningful examination of, and solution to, the issue of removing implicit subsidies and replacing them with explicit support. Nothing in the Joint Board’s suggested methodology is consistent with the Commission’s goal heretofor of targeting federal high cost support for those high cost consumers in a state where resources are inadequate to maintain and advance affordable universal service.

#### IV. FEDERAL HIGH COST SUPPORT WILL BE PORTABLE, BUT IT MUST BE USED FOR THE BENEFIT OF HIGH COST CONSUMERS FOR WHOM IT IS INTENDED

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The Joint Board endorses the portability of federal support among all eligible telecommunications carriers.<sup>31</sup> However, portability should not be used as a device to divert federal support funds targeted for subscribers in the highest cost areas to other uses.

Therefore, it is important that the Commission adopt measures under which eligible telecommunications carriers receiving federal high cost support would confirm that the support is being used by the receiving carriers to provide Section

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<sup>29</sup> 47 U.S.C. § 254(a)(2).

<sup>30</sup> ITT World Communications, Inc. v. FCC, 725 F.2d 732, 754 (D.C. Cir. 1984).

<sup>31</sup> Second Recommended Decision ¶ 56.

214(e)(1)<sup>32</sup> eligible services to subscribers in the highest cost areas. The Joint Board recommended that the Commission permit, but not require, states to certify that a carrier must use federal support funds in a manner consistent with Section 254 as a condition to receive federal high cost support.<sup>33</sup>

U S WEST believes that Congress required the Commission to take a more proactive role in overseeing the use of federal support monies. U S WEST recommends that the Commission adopt mechanisms pursuant to which carriers who receive federal high cost support funds would confirm that the funds will be applied to the carrier's cost of providing eligible services to subscribers in the highest cost areas in the study area or state.

V. ALL CONTRIBUTORS SHOULD BE REQUIRED TO RECOVER THEIR CONTRIBUTIONS DIRECTLY FROM CONSUMERS THROUGH A UNIFORM MANDATORY RETAIL END-USER SURCHARGE

In the Universal Service Order, the Commission concluded that contributors to the universal support programs would be permitted, but not required, to recover their contributions through the contributing carrier's interstate rates to subscribers. The Commission said that contributors should have the flexibility to decide how to recover their universal service contributions.<sup>34</sup> However, the Commission also concluded that incumbent LECs who are subject to price cap regulation would only be permitted to add their universal service contributions to their common line basket and to recover their contributions in the same manner as common line

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<sup>32</sup> 47 U.S.C. § 214(e)(1).

<sup>33</sup> Second Recommended Decision ¶ 58.

<sup>34</sup> Universal Service Order, 12 FCC Rcd. at 9210-11 ¶ 853.

charges.<sup>35</sup>

After the Universal Service Order was released, some long distance and commercial mobile radio service providers began billing line-item charges on their subscribers' bills to recover their universal service contributions, and the Commission and state regulators began to receive questions and complaints from some subscribers about the nature and amount of these charges. It was alleged that carriers in some cases incorrectly indicated that these charges were mandated by the Commission or federal law.<sup>36</sup>

While it appears that the Joint Board would continue to permit only non-price cap carriers to have the flexibility to decide whether or how to recover their universal service contributions, the Joint Board recommends that the Commission provide "strict guidance" regarding the extent to which carriers may recover their contributions, "express instructions" regarding how these charges may be depicted on a consumer's bill, and a "prohibition" on depicting these charges as a tax or as mandated by the Commission or the federal government.<sup>37</sup> The Joint Board urges the Commission to take "decisive action" on these matters to ensure that consumers are not misled regarding the nature of these charges.<sup>38</sup>

The Joint Board's recommendations are extreme, unnecessary, and go too far. Moreover, they deal with only part of the problem involving contributors' recovery

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<sup>35</sup> Id. at 9171 ¶¶ 772-74.

<sup>36</sup> Second Recommended Decision ¶ 66.

<sup>37</sup> Id. ¶ 68.

<sup>38</sup> Id. ¶ 70.

of contributions. The Commission can correct the consumer confusion which the Commission's different recovery rules have created and about which the Joint Board is concerned. The Joint Board's stern recommendations appear to be directed not at price cap LECs but at non-price cap carriers such as interexchange carriers, wireless carriers, facilities-based competitive LECs, and resellers. The Commission should also use this opportunity to re-affirm its goal of ensuring competitive neutrality among all providers and contributors and modify its rules to require all contributors -- both price-cap and non-price-cap carriers -- to recover their contributions in the same manner.

The Commission should do away with the artificial distinction between how price-cap and non-price LECs may recover their universal service contributions and the Commission should require all carriers to recover their universal service contributions from their consumers as a uniform mandatory retail end-user surcharge on the consumer's bill.

U S WEST agrees with the Joint Board that contributions to the high cost support mechanism should be assessed on both interstate and intrastate end-user revenues, and that any state may assess state fund contributions on interstate and intrastate end-user revenues as well.<sup>39</sup>

U S WEST does not support the suggestion that the Commission should require contributors to use standard nomenclature such as "Federal Carrier Universal Service Contribution" to describe the universal service contribution

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<sup>39</sup> Id. ¶ 63.

recovery on the consumer's bill<sup>40</sup> or that the Commission should direct what a contributor must say on the consumer's bill. U S WEST believes that such government involvement in directing what contributors must say to their customers implicates the First Amendment and the Constitutional safeguards for commercial speech.

Recovery of contributions by all contributors as a uniform mandatory retail end-user surcharge makes sense for consumer and public policy reasons, because it will restore the important Commission goal of ensuring competitive neutrality. Competitive neutrality is not achieved by allowing some providers to turn the assessment into a competitive advantage. Not all providers have the same regulatory flexibility to decide how to recover their costs. The only truly competitively neutral cost recovery mechanism is a uniform mandatory end-user surcharge.

An end-user surcharge, or some comparable equivalent, for contributors' support of universal service is also mandated by the 1996 Act. Section 254(e) requires that all support for universal service be "explicit" and Section 254(d) requires that the support mechanisms be "specific." These are not merely objectives, but requirements, of the 1996 Act.

The Commission determined that contributions should be assessed against interstate end-user telecommunications revenues. However, the Commission requires price-cap LECs to disguise their contributions and to recover them from

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<sup>40</sup> Id. ¶ 72.

the carrier common line basket while non-price cap LECs enjoy unfettered flexibility about when or how to recover their contributions. The recovery mechanism under which price-cap LECs must operate perpetuates the practice of implicit subsidies and is not competitively neutral. The 1996 Act no longer permits this.

To ensure that the Commission's Universal Service Order complies with the requirement that funding be explicit, the Commission should require all contributors to recover their contribution as a uniform mandatory retail end-user surcharge that is reflected in the end-user's retail bill. By deciding that contributions should be based upon end-user revenues, the Commission has already positioned the assessment base to implement an end-user surcharge. Recovering contributions as a surcharge would obviate the need for price-cap carriers to change their access rates as a result of fluctuations in their support obligations, all eligible telecommunications carriers would be subject to the same contribution recovery rule, and competitive neutrality could be re-established at least as among contributors to federal universal service support. U S WEST urges the Commission to consider adopting a uniform mandatory retail end-user surcharge.

VI. U S WEST AGREES WITH THE JOINT BOARD THAT THE COST MODEL ADOPTED BY THE COMMISSION DOES NOT COMPLY WITH THE COMMISSION'S COST MODEL SELECTION CRITERIA, BECAUSE THE SUPPLIER'S GEOCODED CUSTOMER LOCATION DATA IS CLAIMED TO BE PROPRIETARY AND IS NOT AVAILABLE FOR PUBLIC INSPECTION AND COMMENT

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On October 28, 1998 the Commission released an Order in which it selected the cost proxy model platform which would be used to determine federal universal

service support for non-rural LECs.<sup>41</sup> In the Universal Service Order, the Commission had said that the cost model selected by the Commission must meet ten criteria, one of which required:

The cost study or model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment. All underlying data should be verifiable, engineering assumptions reasonable, and outputs plausible.<sup>42</sup>

For purposes of determining customer location, the Commission concluded that HAI's proposal to use actual geocoded data, where the data is available, is the preferred approach and BCPM's proposal to use road network information, where actual geocode data are not available, provides the most reasonable alternative approach.<sup>43</sup>

However, while the Commission said that the geocoded data prepared for the HAI model by the HAI sponsors' consultants, PNR Associates ("PNR"), "is now available for review,"<sup>44</sup> the data is, in fact, not publicly available. The PNR data upon which the Commission relies as a major component of the cost model platform is claimed by PNR as its confidential and proprietary information. Moreover, parties are permitted access to the data only on-site at PNR's offices under the Commission's protective order and only if they compensate PNR. These requirements make any detailed analysis of PNR's geocoded data impossible.

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<sup>41</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifth Report & Order, FCC 98-279, rel. Oct. 28, 1998 ("Cost Model Order").

<sup>42</sup> Universal Service Order, 12 FCC Rcd. at 8915 ¶ 250.

<sup>43</sup> Cost Model Order ¶ 31.

<sup>44</sup> Id. ¶ 34.



Recently, the Commission attempted to distinguish its use of the PNR geocoded data. The Commission says that it regards the PNR data as exempt from the Commission's cost model selection criteria which require that data be publicly available for review and comment. In its Order substantially denying GTE's "Emergency Motion for Disclosure of Data and Information to Permit Public Review and Extension of Time," the Commission contends that the geocoded data relied upon by the Commission in adopting the cost model represents an "input" rather than a "platform" design issue.<sup>45</sup> The Commission contends that "any properly formatted geocoded data" "from a number of sources" can be used as "test data" to analyze the design assumptions, algorithms, logic, and other moving parts of the model platform.<sup>46</sup> And the Commission intimates that the proprietary PNR data upon which it has relied to date is merely "surrogate data."<sup>47</sup> However, in spite of diligent searches, the Commission has been unable to identify another publicly available source of complete geocoded data.

The PNR geocoded data upon which the Commission has relied to date is integral to the design and analysis of the cost model adopted by the Commission. Unless another source can be identified, other than portions of surrogate sources for testing, the use of the PNR proprietary geocoded data for the cost model will not comply with the Commission's cost model criterion -- even if the Commission

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<sup>45</sup> In the Matter of Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96-45, 97-160, Order, DA 98-2567, rel. Dec. 17, 1998 ¶¶ 9, 11.

<sup>46</sup> Id. ¶ 9.

<sup>47</sup> Id. ¶ 9 and n.34.

chooses to describe the data as merely an input value which has not been finalized.

The Commission reached a different conclusion about the use of proprietary data in the Cost Model Order when it rejected use of BCPM's switching module, because "its default costs and allocation factors are based on results from the proprietary SCIS and SCM models" and "the defaults used to generate the results that BCPM uses in its modules have not been placed on the record in this proceeding."<sup>48</sup>

Geocoded data used in the Commission's cost model is subject to the same criticism. The cost model criteria adopted by the Commission at the commencement of the scrutiny of the competing cost models are controlling. U S WEST agrees with the Joint Board:

[A] model must meet the openness criterion required of all model developers. At present the federal platform has been tested using geocoded customer location data that is treated as proprietary information by its supplier. We also understand that the Commission is seeking to identify alternative data sources at this time. We urge the Commission not to adopt those particular data as input values unless the Commission determines that such data are sufficiently open and available for testing and comment.<sup>49</sup>

The Commission should provide a copy of the geocoded data upon which it relied in the Cost Model Order to all interested parties so that they have the opportunity to review and comment on the Commission's selection of this

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<sup>48</sup> Cost Model Order ¶ 78.

<sup>49</sup> Second Recommended Decision ¶ 29. Bell Atlantic and GTE also agree that the geocoded data is proprietary and does not comply with the Commission's cost model selection criteria. Letter dated November 20, 1998 from Frank J. Gumper (Bell Atlantic Network Services) to Larry Strickling (Chief, Common Carrier Bureau); Emergency Motion of GTE for Disclosure of Data and Information to Permit Public Review and Extension of Time, CC Docket Nos. 96-45 & 97-160, filed Nov. 30, 1998.

component of the cost model. Unless the PNR geocoded data used to determine customer location is made publicly available, or until an another publicly available data source is found,<sup>50</sup> the selection of the cost model platform cannot withstand judicial scrutiny. The Commission must follow its own cost model selection criteria.

VII. FEDERAL HIGH COST FUNDS SHOULD BE AVAILABLE TO PARTIALLY OFFSET LINE EXTENSION OR CONSTRUCTION CHARGES ASSOCIATED WITH ESTABLISHING SERVICE TO LOW-INCOME CUSTOMERS

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Consumers located in unserved rural areas are often unable to obtain telephone service, because they cannot afford to pay the line extension or construction charges necessary to extend facilities to their homes. As the Arizona Corporation Commission ("ACC") said: "These Americans are in reality the essence of what a 'universal telephone service' fund should be all about."<sup>51</sup> However, "no one is aware of the true extent of this problem."<sup>52</sup> The ACC suggested that the Joint Board and the Commission gather information and data to determine the extent of the problem on a national level and that guidelines and criteria be established for distribution of funds for this purpose.<sup>53</sup>

In its Second Recommended Decision, the Joint Board made the following recommendation:

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<sup>50</sup> The BCPM sponsors -- including U S WEST -- are working with the Commission staff to develop an alternate source for geocoded data.

<sup>51</sup> Proposal Of The Arizona Corporation Commission For Distribution Of Federal USF Funds To Establish Service To Low-Income Customers In Unserved Areas, Or In The Alternative, For Amendment Of The May 8, 1997 Report And Order To Provide For Federal USF Distribution For This Purpose, filed Apr. 28, 1998 at 2-3.

<sup>52</sup> Id. at 7.

Although historically a state issue, we recognize that there may be some circumstances which may warrant federal universal service support for line extensions to unserved areas. We recommend that the special needs of unserved areas be investigated and subject to a more comprehensive evaluation in a separate proceeding.<sup>54</sup>

The Commission had previously reached the same conclusion in the Universal Service Order where the Commission said:

Further investigation is needed to determine whether there are special circumstances, such as the need to attract carriers to unserved areas or to upgrade facilities, in which it may or may not be reasonable to compensate one-time costs with one-time payments. Because we believe this issue should be examined further, we will consider this proposal in a future proceeding.<sup>55</sup>

It is time to begin the investigation and to collect facts and data to determine the extent of the problem. U S WEST strongly encourages the Commission to initiate that separate proceeding as it promised.

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<sup>53</sup> Id. at 8.

<sup>54</sup> Second Recommended Decision ¶ 55.

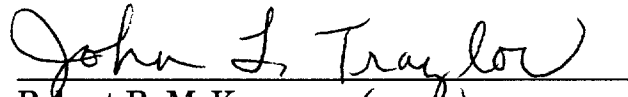
<sup>55</sup> Universal Service Order, 12 FCC Rcd. at 8902 ¶ 231.

VIII. CONCLUSION

U S WEST respectfully requests that the Commission finalize the distribution and contribution-recovery methodologies for the federal high cost support mechanism consistent with the suggestions in these comments.

Respectfully submitted,

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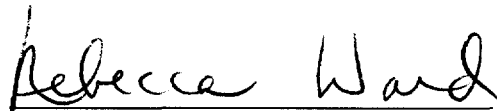
Its Attorneys

Of Counsel,  
Dan L. Poole

December 23, 1998

## **CERTIFICATE OF SERVICE**

I, Rebecca Ward, do hereby certify that on this 23<sup>rd</sup> day of December, 1998, I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC. TO JOINT BOARD'S SECOND RECOMMENDED DECISION** to be served, via hand delivery, upon the persons listed on the attached service list.

  
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